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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,058	09/21/2001	Terri J. Fort	21-0329	4758

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EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,058

Applicant(s)

FORT, TERRI J.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The process claims appear to have a step missing. Applicant is providing a mixture of black dye, salt and water and pouring the mixture over the clothes and washing garments with said mixture. Every commercial washing machine has its own inlet for water. In order to use a washing machine, water from this inlet is added to the washing machine tub. If applicant is making a mixture comprising a small amount of water in order to dissolve the dye and salt therein, then he necessarily then adds a large volume of water to the washing machine. That step of adding additional water to the washing machine is missing. Accordingly, in the claims wherein the percentage of water is claimed, that is not the amount in the machine during the dyeing process. Additionally, the process described is a dyeing process, not a washing process, since there is no mention of the addition of a washing agent to the machine. The dyeing composition will dye the garments; it will not wash them.

Claims 7-9 are further indefinite for being improperly dependent on claim 6. Claim 6 claims a method of making a mixture; claims 7-9 claim a method of darkening faded garments.

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The title of the invention is not properly descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should not refer to a dyeing apparatus as none is disclosed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 and 6 are rejected under 35 U.S.C. 102(b)) as being unpatentable over Jager, US 5,665,124. Jager discloses the formation of dyestuff granules by mixing 30-80% of a reactive dye, 5-15% water and an alkali metal chloride (which is applicant's claimed sodium chloride) Col 2 lines 43-48. According to dyeing instructions 1 in col 6 lines 59 et seq. a dyestuff and sodium chloride as claimed is added to water in a dyeing vessel (applicant's claimed container) and cotton fabric is added thereto. In either of these sections, mixing dye, sodium chloride and water and then dyeing is disclosed. That is applicant's method of mixing and method of dyeing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rit.

Rit discloses the process of dyeing in a washing machine using a mixture of a package of Rit dye powder, salt and water or Rit dye liquid. See "5 easy Steps to Successful Dyeing on the Rit website. Note the pretreatment step wherein a fabric which is stained or previously dyed is addressed. Note under step 4 that a washing machine is recommended for large items. On the page "Tips for True Color" fourth paragraph states that better color intensity is achieved with black if additional salt is used. These are the instructions that have been on the Rit dye package for many years. Rit also makes a dye product which is in the form of a liquid and comes in an 8 ounce container. The packages of both the powdered form of the dye and the liquid form state that they contain sodium chloride. Although the website is not prior art to applicant's invention, the examiner has used this brand of dye and this dyeing technique for at least 20 years to refresh the color of textiles.

Rit differs from applicant's process because it does not state the ratio of dye to salt in either of its packages. Accordingly we do not know the ratio in the commercial packages. Regarding the limitation of the temperature of the water which is added to the dye and salt, when using Rit liquid dye which is already mixed with salt in the package, one uses the package which is at room temperature, very close to applicant's claimed water temperature for the water which is mixed with the dye and salt.

It would have been obvious to one having skill in the art at the time the invention was made that applicant's claimed composition and process is the same as, or an

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obvious variant of, Rit's compositions and process because Rit discloses dyeing in a washing machine with a mixture of dye, salt and water, washing previously dyed clothing, and specifically mentions dyeing with black dye and salt. When one uses a Rit dye package, one is using a mixture of sodium chloride salt and dye, either in dry or liquid form. Since one adds the dye-salt to a large volume of water, the amount of water in the package is not relevant to the dyeing process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

July 10, 2003



Margaret Einsmann
Primary Examiner
Art Unit 1751